SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • FAX: (415) 352-3606 • www.bcdc.ca.gov

Agenda Item #9

July 3, 2003

Application Summary
(For Commission consideration on July 17, 2003)

Number:	BCDC Permit Application No. 2-02
Date Filed:	June 27, 2003
90th Day:	September 25, 2003
Staff Assigned:	Andrea M. Gaut (415/352-3618 andreag@bcdc.ca.gov)

Summary

Applicant: Mark Sanders

Location: The proposed Westpoint Marina and Boatyard would be located east of the Pacific Shores Center office and commercial development, off Seaport Boulevard, south of Greco Island and Westpoint Slough, in the City of Redwood City, San Mateo County.

Project: The proposed project would consist of a full-service harbor facility and destination marina in a former salt pond used for bittern storage. An approximately 25.6-acre basin would be excavated from the 50-acre site. After excavation of the basin, the existing levee along Westpoint Slough would be breached to create a 300-foot-wide opening for boat traffic. The project would include the following components: (1) a 416-boat-slip marina; (2) a boatyard with two haul-out bays, a two-lane public launch ramp, a 6,000-square-foot rowing boathouse, 8,000 square feet of boatyard shops, and 21, 000 square feet of dry stack boat storage; (3) a marina resort, consisting of 3,500 square feet of harbormaster facilities, a 5,000-square-foot yacht club, a 8,000-square-foot restaurant, a 6,000-square-foot marine store, and 10,000 square feet of marina-related retail space; and (4) public access consisting of a pathway along the perimeter of the basin, overlooks of the boat launch area, Westpoint Slough, and the adjacent habitat, a boardwalk, vehicle and boat trailer parking, marina greens and guest berths.

Issues Raised: The staff believes that the application raises six primary issues, whether the project is consistent with the McAteer-Petris Act and San Francisco Bay Plan policies regarding: (1) salt ponds; (2) Bay fill; (3) recreation; (4) public access; (5) water quality; and (6) fish and wildlife and tidal marsh and tidal flats.

Project Description

Project Details: The applicant describes the project as follows:

In the Bay, in a Salt Pond, and Within the 100-foot Shoreline Band:

Phase One

1. Create a marina basin by excavating approximately 545,000 cubic yards (cy) of material from approximately 26.6 acres of the site to an average depth of 15 feet below Mean High Water (MHW);
2. Dewater the excavated sediment on site by pumping liquid into the adjacent salt pond for processing. (A temporary berm constructed between the project site and the salt pond would prevent movement of material from the remaining salt pond back into the project site);
3. Create, use, and maintain a 24-acre upland area by reusing approximately 272,500 cubic yards of the excavated material (the volume of excavated material –545,000 cubic yards—would shrink by 50 percent once dry);
4. Place and use approximately 64,000 cubic yards of imported, clean soil on the upland portion of the site to create a three-foot-deep cap over any bittern-impacted material taken from the marina basin;
5. Siphon water from Westpoint Slough at high tide into the new marina basin bringing its surface to mean low water (MLW) so that breaching the levee would not result in adverse impacts;
6. Create a 300-foot-wide marina entrance by breaching the levee between Westpoint Slough and the new marina basin;
7. Place and use approximately 11,000 cy of material removed from the levee breach on the upland project site;
8. Install, use, and maintain approximately 96,500 square feet of riprap below mean high water and 24,500 square feet of riprap above mean high water in the new marina basin;
9. Remove and replace approximately 17,500 square feet of riprap below mean high water and 23,000 square feet of riprap above mean high water outboard of the project site in Westpoint Slough;
10. Construct, use, and maintain a 416-boat-slip marina;
11. Construct, use, and maintain a 3,500-square-foot harbormaster's building that includes public restrooms;
12. Construct, use, and maintain three small buildings, each approximately 500 square feet, containing restroom, shower, and laundry facilities for marina patrons;

13. Construct, use, and maintain a 2,160-square-foot, two-lane public boat launch ramp;

14. Construct, use, and maintain a 24-foot-wide road to the site, a 604-space parking lot, and a 30-space vehicle and boat trailer parking lot (15 of the trailer parking spaces would be dedicated public access);

15. Construct, use, and maintain a 145,300 square feet of public access area including approximately 71,800 square feet of walkways, approximately 43,000 square feet of landscaped "greens" and picnic areas, 15 car and boat trailer parking spaces, 12 parking spaces, a twelve to fifteen-foot-wide path along the perimeter of the basin, overlooks of Westpoint Slough and the adjacent habitat, and 20 visitor and transient (guest) berths;

16. Install, use, and maintain a six-foot-tall fence on the east side of the site to prevent access into the marshes adjacent to the project site and along the southern property line with Cargill to prevent access into the salt ponds;

17. Install, use, and maintain a crosswalk, signage, and other pedestrian safety measures where the vehicular access road crosses the Pacific Shores Center public access trail to ensure pedestrian and bicycle safety;

18. Install, use, and maintain signs advising boaters of the sensitive nature of the Greco Island area within Westpoint Slough (*in cooperation with the U.S. Fish and Wildlife Service and State Lands Commission as property owners*); and

19. Install, use, and maintain channel markers in Westpoint Slough from the main Redwood Channel to the entrance of Westpoint Marina notifying boaters of the "no wake zone" (*in cooperation with the State Lands Commission, as property owner*).

Phase Two

1. Construct, use, and maintain boatyard facilities that include two haul-out areas, a large-boat straddle lift bay totaling 2,500 square feet and a small boat forklift pier totaling 950 square feet, a 6,000-square-foot rower's boathouse, 8,000 square feet of boatyard shops, and 21,000 square feet of dry stack boat storage. All structures would be a maximum height of 30 feet;

2. Construct, use, and maintain a 500-square-foot fuel dock, including a pump-out facility;

3. Construct, use, and maintain an approximately 69,440-square-foot roof to cover the two easternmost docks (constructing a total of approximately 100 covered berths);

4. Construct, use, and maintain public observation areas overlooking the launch ramp and boat haul-out; and

5. Install, use, and maintain a four-foot-tall fence between the public launch ramp and boatyard haul-out and between the haul-out and the boathouse, to ensure public safety.

Phase Three

1. Construct, use, and maintain buildings associated with a marina resort including up to a 5,000-square-foot yacht club, up to a 8,000-square-foot restaurant, up to a 6,000-square-foot marine store, and up to 10,000 square feet of retail space. All structures would be a maximum height of 30 feet; and

2. Construct, use, and maintain a 15-foot-wide public boardwalk adjacent to the retail areas.

Site Background: The 50-acre site is a portion of a historic salt pond (Pond 10) that contained bittern, a hypersaline waste byproduct of solar salt production. The combination of hypersalinity (11 to 12.5 times more saline than sea water) and ionic imbalance makes bittern toxic to aquatic organisms. Pond 10 has been used as a multi-purpose pond, often to accumulate bittern from operations in Redwood City by Cargill Salt and its predecessor Leslie Salt since 1946. In 2001 and 2002, Cargill completed harvesting all liquid bittern and other by-products of the salt evaporation process from the project site as part of its normal operations. Although the liquid bittern has been removed, approximately four to eight inches of bay mud containing bittern salts remain on the surface.

On the northwest side of the site, acting as the boundary between the proposed project site and the Pacific Shores Center, is a man-made drainage ditch. Located to the north and east of the site, Westpoint Slough is navigable for boats, even at mean lower low water. Greco Island, approximately 800 feet across the slough, is part of the Don Edwards San Francisco Bay National Wildlife Refuge and is one of the few remaining large marshes left in the South Bay that supports populations of shorebirds and waterfowl. The endangered salt marsh harvest mouse and California clapper rail are known to occur on Greco Island. The project site borders salt marsh habitat on the southeast, outboard side of the current salt pond levee on Westpoint Slough.

Public Access: The public access areas would consist of a pathway along the perimeter of the basin, one pedestrian access connection from the Pacific Shores Center along the shoreline, overlooks of the boat launch area, Westpoint Slough, and the adjacent habitat, two landscaped lawn areas, public access parking for vehicles and some public boat trailer parking, a boardwalk, and visitor and transient berths.

Fill: The project would result in fill in a salt pond, as upland land would be created with the placement of 272,500 cubic yards of sediment over approximately 25 acres and approximately 96,500 square feet of riprap would be placed around the excavated basin. Once the levee is breached and tidal action is introduced to the site, the marina part of the project would result in Bay fill, consisting of approximately 98,247 square feet of docks, 4,505 square feet of boardwalks, 277 square feet of pilings to support the boat docks, covered berths, and public access boardwalk, 69,440 square feet of covered boat docks, 2,160 square feet for the boat launch ramp, 3,450 square feet for a lift bay and forklift pier, the haul-out, and 17,500 square feet of riprap on the outboard levee, totaling 195,579 square feet of Bay fill. The project would result in approximately 447,550 square feet of new Bay surface.

Schedule and Cost: The applicant plans to construct the project in three phases. Phase One would include the site preparation, basin excavation, and build-out of the service infrastructure, docks, restrooms and harbormaster's office, which is scheduled to begin this summer or as soon as possible, and be completed in October 2004. Phase Two would include the boatyard area and associated structures, to be completed in June 2006. Phase Three would include the retail area on the northwest end of the project site, to be completed in June 2007. Phase one costs are estimated at $3.5M; phase two costs are estimated at $1.5M; and phase three costs are estimated at $2M.

Staff Analysis

A. **Issues Raised**: The staff believes that the application raises six primary issues, whether the project is consistent with the McAteer-Petris Act and San Francisco Bay Plan policies regarding: (1) salt ponds; (2) Bay fill; (3) recreation; (4) public access; (5) water quality; and (6) fish and wildlife and tidal marshes and tidal flats.

1. **Salt Ponds.** In addition to the Bay Plan salt pond policies outlined below, it is important to note that the Bay Plan findings for salt ponds state, in part, that "...ponds provide 15 percent of the total Bay and pond water surface. This large pond surface area supplements the water surface of the Bay and thus helps to moderate the Bay Area climate and to prevent smog." The findings also state that "[t]he ponds are used as a habitat by shorebirds." Finally, the findings state that "[t]he ponds...provide some of the open space character of the Bay."

   a. **Integrity of Salt Pond Production System and Opening Ponds to the Bay.** Bay Plan Salt Pond policy number one states that "[a]s long as is economically feasible, the salt ponds should be maintained in salt production and the wetlands should be maintained in their present use. Property tax policy should assure that rising property taxes do not force conversion of the ponds and other wetlands to urban development. In addition, the integrity of the salt production system should be respected (i.e., public agencies should not take for other projects any pond or portion of a pond that is a vital part of the production system)."

   Salt Pond policy number two states that, "[i]f, despite these provisions, the owner of the salt ponds or the owner of any managed wetland desires to withdraw any of the ponds or marshes from their present uses, the public should make every effort to buy these lands, breach the existing dikes, and reopen these areas to the Bay. This type of purchase should have a high priority for any public funds available, because opening ponds and managed wetlands to the Bay represents man's last substantial opportunity to enlarge the Bay rather than shrink it. (In some cases, if salt ponds are opened to the Bay, new dikes will have to be built on the landward side of the ponds to provide the flood control protection now being provided by the salt pond dikes.)"

   Cargill Salt Company stated in a letter written to Commission staff dated February 25, 2003, that the project site is no longer needed for the salt production process because "Pond 10 has never been an economically viable part of our salt making operations." Cargill states that the sale of a portion of Pond 10 to the applicant has not affected the salt making operations. Pond 10 is a highly saline pond at higher elevations than neighboring ponds. Historically, Cargill used the pond for desalting and other purposes and most often for the deposition of bittern liquids to allow more salt to precipitate out of the liquid. Cargill states that bittern has always been "...a saleable product, but until recently, production exceeded demand." In recent years, bittern sales have increased, allowing Cargill to construct a bittern plant in Newark. Now bittern from the Redwood City salt ponds is shipped to the Newark plant, when the demand for bittern is high. Although the Redwood City salt ponds are not currently a major salt harvesting facility due to the current salt market, these ponds are still maintained and utilized to amplify their use if and when the salt demand increases. Cargill states that it "...cannot predict what future market conditions in salt may bring so we cannot know how long it will be profitable to utilize the Redwood City facilities for salt making facilities."

   Cargill also stated in its letter that the development of a portion of Pond 10 would not impact the potential opening of the remaining salt ponds to the Bay. Cargill has "...retained the right to drain through the marina and the remaining frontage along First Slough totals thousands of feet...providing excellent access to the Bay." Cargill stated that is has "...no definitive plans for the ultimate use of the remaining 1,400

acres of the Redwood City plant site. We [Cargill] acknowledge the intense interest in this site by a number of individuals, organizations and agencies, and as previously stated, have no plans at this time."

The applicant executed a contract of sale on a portion of the current project site (35 acres) in 1993. In conjunction with this sale Cargill provided eight acres to the applicant as an easement to provide a barrier between the marina and salt production activities on Cargill's property. At that time, Cargill determined the multi-purpose pond was larger than needed and that the northern corner of Pond 10 could be sold. In the intervening years the applicant was able to annex the property to Redwood City, make it a legal parcel, and move forward with the permitting process. In the same period Cargill began to assess its operations and began discussions with resource agencies for the potential sale of surplus property. Cargill states acreage from Redwood City was made available in the sale of surplus ponds to the public but were determined to be too costly to include in the purchase price to the public. Cargill states that a number of government agencies stated "...that the purchase price for the Redwood City plant site was not an appropriate use of very limited public funds for resource properties." Throughout the negotiations, the Westpoint Marina site was specifically excluded, as it was previously committed by contract. Subsequently Cargill sold 7 additional acres to the applicant to increase the open-water portion of the marina, and continues to maintain the remaining Redwood City salt ponds.

b. **High Wildlife Value and Dedicated Open Water.** Salt Pond policy number three states that, "[I]f public funds do not permit purchase of all the salt ponds or marshes proposed for withdrawal from their present uses, and if some of the ponds or marshes are therefore proposed for development, consideration of the development should be guided by the following criteria: (a) Just as dedication of streets, parks, etc., is customary in the planned unit development and subdivision laws of many local governments, dedication of some of the pond or marsh areas as open water can and should be required as part of any development. Highest priority to such dedication should be given to ponds that (1) would, if opened to the Bay, significantly improve water circulation, (2) have especially high wildlife values, or (3) have high potential for water-oriented recreation. (b) Depending on the amount of pond or marsh area to be dedicated as open water, the public may wish to purchase additional areas. Plans to purchase any ponds or marshes should give first consideration to the priorities in paragraph a. above. (c) Development of the ponds or marshes should provide for retaining substantial amounts of open water, should provide for substantial public access to the Bay, and should be in accord with the Bay Plan policies for non-priority uses of the shoreline."

Salt Pond policy number four states that, "[a]s soon as possible, recreational developments such as marinas and small parks should be built in appropriate areas outboard of the present salt ponds, or in sloughs; but these developments should in no way jeopardize the salt production system or be so located as to prevent opening of ponds to the Bay at any future time."

The project site is 50 acres in size and approximately half the site would be excavated to create a water basin. However, a 416-boat slip marina would be constructed in the 26.6-acre water basin, as well as a public boardwalk, boat launch area, and boatyard haul-out. Salt pond policy numbers three and four note the importance of both open water, wildlife habitat, and water-related recreation. It should be noted that the South San Francisco Bay offers few suitable sites for a marina, and this site in the Redwood City deepwater port area is expected to incur minimal maintenance dredging.

Salt pond policy number three states that developed salt ponds should provide substantial open water and the policy implies that opening a salt pond should be done to increase the health of Bay species and thus improve environmental conditions. The staff believes that open water proposed as part of the marina development should be considered in both quantitative and qualitative terms. The staff believes that the fairways would provide some environmental benefit, but they would provide less benefit than an open water area. Furthermore, the staff believes that open water, by definition, should not be covered by pile-supported, cantilevered, or floating fill. Finally, the presence of boat slips in a basin, because they are so frequently occupied by boats, arguably may not be considered open water. The project would create a 25.6-acre (approximately 1,089,000-square-foot) water basin. Within the basin, approximately 115,700 square feet would be open water, located between the marina opening and the fairways, approximately 331,850 square feet would be fairways between the rows of boat slips, and approximately 641,450 square feet would be covered with boats, boat slips, and docks.

Salt pond policy number three states that salt ponds that have especially high wildlife values should be preserved or given priority for potential purchase and preservation. The U.S. Fish and Wildlife Service (FWS) and California Department of Fish and Game (DF&G) were contacted by staff regarding the potential wildlife value of the project site. DF&G stated that there was very little data on bird use of the Redwood City salt ponds because the ponds have not been made available by Cargill for surveys. DF&G added that bittern ponds tend to be less valuable to wildlife because of the presence of high salinity. When bittern ponds dry out, however, they can provide habitat for the endangered snowy plover. The FWS noted in a October 22, 2002 letter that similar to DF&G, it was not sure of the value of the project site because surveys have not been conducted at this location. However, the FWS has noted that on the occasions when the bittern pond was partially dry or dry shorebirds were observed resting at the site, although there is no feeding nor nesting on the dried bittern.

Furthermore, FWS is concerned that the mitigation proposed for the loss of 2.3 acres of shorebird roosting habitat on the site would not result in the long-term protection from disturbance if the nearby salt ponds are developed. The mitigation for shorebird roosting habitat would include the creation of 3.0 acres of habitat with similar functions on Cargill property to the south of the project site. The FWS also states that mitigation measures would be required to avoid impacts to nearby Greco Island and that development of the project site could impact the restoration of the remaining salt ponds, as item number six of this project summary discusses further. In conclusion, although the project site does appear to have significant resource values for wildlife, its total value is unknown due to the lack of surveys at the site. The presence of bittern, however, may make the project site less valuable to wildlife compared to ponds that contain lower salinity levels.

Salt pond policy number three notes the importance of water-related recreation. Thus, staff believes that because this project site would be developed as a marina, it provides public benefits that other developments would not. For example, a marina would provide water-related recreational benefits that a residential or office development would not. However, Bay Plan salt pond policy number three requires that any development of salt ponds, including a marina, must still provide substantial open water.

The Commission should determine whether the proposed project is consistent with the McAteer-Petris Act and the San Francisco Bay Plan policies on salt ponds and other managed wetlands in providing water-related recreation and substantial open water,

specifically whether the project would maintain the integrity of the salt pond production system, provide substantial open water, minimize impacts to wildlife, and result in dedicated open water.

2. **Consistency with Fill Policies of the McAteer-Petris Act and Bay Plan.** The Commission may only allow fill for any use when it is consistent with the McAteer-Petris Act and Bay Plan. The placement of fill in the Bay may be authorized when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that: (1) the public benefits from the fill must clearly exceed the public detriment from the loss of water areas; (2) the fill should be limited to water-oriented uses, such as ports, water-related industry, and bridges, or minor fill to improve shoreline appearance or public access; (3) there should be no alternative upland location; (4) the fill should be the minimum amount necessary; (5) the fill should minimize harmful effects to the bay, such as the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish and wildlife resources; and (6) that the fill should, to the maximum extent feasible, establish a permanent shoreline. Fill in salt ponds may be authorized only if the Commission can find that the fill meets the tests of subsections three, four, five, and six above.

   The proposed project would result in filling approximately 25 acres of a salt pond to create upland for marina resort and boatyard facilities and the excavation of approximately 26.6 acres of the salt pond to create a water basin. Approximately 96,500 square feet of riprap would be placed in the excavated basin before it is opened to tidal action. Once opened to tidal action, the marina basin would be filled with approximately 178,079 square feet of Bay fill for marina uses. In addition, approximately 17,500 square feet of riprap would be placed in Westpoint Slough on the outboard side of the project levee. Most of the fill would be placed in the Commission's salt pond jurisdiction, although the marina basin would become Bay once the levee is breached, an action that would occur prior to installing the proposed boat slips, boats, and docks.

   a. **Public Benefit.** The applicant believes the project would provide a significant public benefit because there are few marina and boatyard facilities in the South Bay, yet a high demand for these uses exists. The applicant states that "[t]he South Bay is the largest of the San Francisco Bays and it borders on the largest population group in the greater Bay area. Unfortunately, a combination of the shallow nature of the South Bay, the high cost of maintenance dredging, and extremely high land values have depleted the once rich boating and fishing infrastructure of the South Bay, and today few marinas and boating facilities remain. Marinas and boatyards in Alviso, Palo Alto, Menlo Park, Belmont and most recently Redwood City have closed. Pete's Harbor in Redwood City has also been sold for condo towers and is due to close next year, suffering the same fate as Peninsula Marina in Redwood City. These two losses represent more than 700 displaced boats. There are not boatyards left in the South Bay...the large boating community in the South Bay now must travel to Sausalito, Alameda, or the Delta for these basic services. Once a cruising destination for virtually every boating and yacht club in the bay, today few boats venture south because of the lack of basic facilities and guest berth accommodations...."

      The potential public detriments associated with the project are discussed below in items 5 and 6 of this report.

   b. **Water-oriented Use.** The fill in areas that would be tidal when the salt pond levee is breached is all for water-oriented uses.

   c. **Alternative Upland Location.** The project site does not have any upland or non-salt pond area that could support this proposed development; upland land must be created by filling the salt pond. However, since the basin would be excavated in the dry, before the pond is open to tidal action, the fill for the marina support facilities such as parking, boatyard, marina commercial, and restaurants, would not be fill in

the Bay. Once the levee is breached, the boat basin would fall within the Commission's "Bay" jurisdiction and the boat slips would be considered fill. These proposed marina facilities, such as boat slips and boat launch ramp, could not be constructed at an upland location, but require water to function, thus there is no alternative location for the fill.

d. **Minimum Fill Necessary.** The applicant believes the project involves the minimum amount of fill necessary to create a successful marina and amortize the investment needed to create the water basin and associated upland facilities. The land area is required to construct a full-service boatyard, marina resort, and associated parking and public access facilities. In addition, the applicant has stated that the due to the number of marinas that have closed in the South Bay, the number of boat berths proposed is appropriate for the demand.

e. **Minimize Harmful Effects.** The proposed project would result in the removal and capping of bittern, a substance that can be toxic to aquatic organisms. However, the project would also result in the development of a former salt pond and will likely introduce more boat traffic in the Westpoint Slough, potentially impacting the adjacent wildlife at Greco Island. Mitigation measures are included in the environmental document which require signage and buoys in Westpoint Slough to keep boaters away from sensitive habitat and alert them to a "no wake zone" in front of Greco Island.

f. **Permanent Shoreline.** The proposed marina project would result in a permanent shoreline, as the size of marina basin limits any expansion of the marina. Shoreline protection would ensure that the public access proposed is made available in the long-term, avoiding erosion at the site. The applicant does not own the open water areas outside of the project levee and thus cannot dedicate any open water area.

The Commission should determine whether the proposed project is consistent with the San Francisco Bay Plan fill policies.

3. **Recreational (Marina) Policies.** Recreation Policy No. 4 outlines, in part, the following general standards for marinas: "(1) Marinas should be allowed at any suitable site on the Bay. Unsuitable sites are those that tend to fill up rapidly with sediment; have insufficient upland, contain valuable marsh, mudflat, or other wildlife habitat; or are subject to unusual amounts of fog. At suitable sites, the Commission should encourage new marinas, particularly those that result in the creation of new open water through the excavation of areas not part of the Bay and not containing valuable wetlands. (2) Fill should be permitted for marina facilities that must be in or over the Bay, such as breakwaters, shoreline protection, berths, ramps, launching facilities, pump-out and fuel docks, and short-term unloading areas. Fill for marina support facilities may be permitted at sites with difficult land configurations provided that the fill in the Bay is the minimum necessary and any unavoidable loss of Bay habitat, surface area, or volume is offset to the maximum extent feasible, preferably at or near the site. (3) No new marina or expansion of any existing marina should be approved unless water quality and circulation will be adequately protected and, if possible, improved. (4) In addition, all projects approved should provide public amenities such as viewing areas, restrooms and public parking; substantial physical and visual access; and maintenance for all facilities. Frequent dredging should be avoided." The recreation policies also state that only ten percent of the total slips can be authorized for live-aboard boats.

A Geotechnical report prepared for this project in November 2002 indicates that Westpoint Slough has not been dredged in the project area and is scoured naturally in this location, allowing a depth, even at low tide, which is appropriate for recreational boating. According to the report, the marina basin is not expected to fill up rapidly with sediment. The applicant has stated that every ten years up to 50,000 cubic yards of sediment may need to be dredged to maintain the marina entrance and basin depth. The

proposed project would result in excavating a former salt pond and introducing tidal action to the site. Fill would be placed in the salt pond for marina support facilities and the majority of Bay fill would be for marina-related facilities. Habitat impacts to wetlands adjacent to the site would be mitigated, as required by the U.S. Fish and Wildlife Service and described further below. Water quality would be protected through the implementation of plans to control the run-off associated with marinas, as required by the Regional Water Quality Control Board and outlined in more detail below. Finally, public access would be provided with the project. The applicant has stated that only 10 percent of the marina boat slips would include live aboards.

The Commission should determine whether the proposed project is consistent with the San Francisco Bay Plan policies on recreation.

4. **Public Access.** Section 66602 of the McAteer-Petris Act states, in part, that: "...existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Regarding salt ponds, Section 66602.1 of the McAteer-Petris Act states, in part, that "...if any such areas are authorized to be developed and used for other purposes, the development should provide the maximum public access to the bay consistent with the proposed project and should retain the maximum amount of water surface area consistent with the proposed project." Section 66632.4 of the McAteer-Petris Act states that "[w]ithin any portion or portions of the shoreline band that are located outside the boundaries of water-oriented priority land uses, as fixed and established pursuant to Section 66611, the commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline. When considering whether a project provides maximum feasible public access in areas of sensitive habitat, including tidal marshes and mudflats, the commission shall, after consultation with the Department of Fish and Game, and using the best available scientific evidence, determine whether the access is compatible with wildlife protection in the Bay."

   The San Francisco Bay Plan policies on public access further state that "...maximum feasible public access should be provided in and through every new development in the Bay or on the shoreline...the access should be permanently guaranteed...should be consistent with the physical environment...provide for the public's safety and convenience...and built to encourage diverse Bay related activities and movement to and along the shoreline...." The San Francisco Bay Plan policies on public access were recently amended and several of the amended policies specifically address the interaction between public access and wildlife. The Bay Plan specifically recommends that "[p]ublic access to some natural areas should be provided to permit study and enjoyment of these areas. However, some wildlife are sensitive to human intrusion. For this reason, projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided." In addition, the Bay Plan policies state that "[p]ublic access should be sited, designed and managed to prevent significant adverse effects on wildlife. To the extent necessary to understand the potential effects of public access on wildlife, information on the species and habitats of a proposed project site should be provided, and the likely human use of the access area analyzed."

   Approximately 145,300 square feet of public access areas would be provided within the total project site and would consist of a pathway along the perimeter of the basin, one pedestrian access connection from the Pacific Shores Center, one vehicular access connection from Pacific Shores Center, overlooks of the boat launch area, Westpoint Slough, and the adjacent habitat, public access parking for vehicles and some public

boat trailer parking, a boardwalk, and visitor and transient berths. In addition, the applicant has agreed to provide at least 10 percent dedicated public access within the building sites.

The proposed project was reviewed by the Design Review Board at two meetings, on May 5, 2003 and June 16, 2003. Generally, the Board liked the layout of the proposed public access, but felt that the Board should review more detailed plans, including architecture and layout of all building sites, the covered berthing, path surfaces, and site furnishings. The Board agreed that views into the marina basin and out to the Bay are as important as the physical connections proposed at the site and that all views should be maintained as much as possible. The project would include two view corridors over grassy lawns that would provide views to the marina from the entry road at Pacific Shores Center. The Board also suggested that the applicant work with staff to develop criteria for augmenting the proposed public access with additional access provided with developing the western building sites. Future buildings would be considerably smaller than the building sites shown on Exhibit F, but are being shown at this size to allow future developers flexibility in siting and designing future buildings.

The project as originally reviewed by the Board included several pedestrian connections to the Pacific Shores Center and two vehicular entrances to the site. However, due to the inability to receive easements from Pacific Shores Center for these connections at this time, the applicant removed these connections from the public access plan. In fact, the ability to only access the marina site through the Pacific Shores Center poses several public access issues. First, the vehicular access into the marina would have to cross a dedicated public access trail required by the Commission in the Pacific Shores Center permit (BCDC Permit No. 21-98). The staff believes that the installation of signage, a crosswalk, and possibly other safety measures (e.g., speed bumps, traffic dots, etc.,) would ensure pedestrian and vehicular safety as this crossing. In addition, because the applicant has been unable to receive an easement from Pacific Shores Center to construct a pedestrian crossing over a drainage ditch on the site, the pedestrian trail along the shoreline would end at the applicant's property line, resulting in an unpaved gap between the trail on the applicant's property and the paved trails at Pacific Shores Center. Both the Design Review Board and staff have recommended to the applicant that he continue to pursue acquiring these easements to increase the vehicular and pedestrian movement into the site. The applicant does have an easement with Cargill that would allow the construction of a road for emergency fire access on the south side of Pacific Shores Center. This fire road would provide a direct connection to Seaport Boulevard. At this time it is unclear whether this fire road could be used for public access due to the applicant's easement terms with Cargill. An alternative connection to Seaport Boulevard is available, however, a perimeter trail on Pacific Shores Center property does connect to Seaport Boulevard and would provide a connection from the marina to Seaport Boulevard.

The Commission should determine whether the project, as proposed, provides the maximum feasible public access consistent with the project.

5. **Consistency with Bay Plan Policies on Water Quality.**

Bay Plan Water Quality Policy Number 1 states, in part, that "[t]o the greatest extent feasible, the Bay marshes, mudflats, and water surface area and volume should be maintained and, whenever possible, increased....Bay water pollution should be avoided." The Bay Plan Policy on Water Quality Number 2, in part, states: "[w]ater quality in all parts of the Bay should be sufficiently high to permit water contact sports and to provide a suitable habitat for all indigenous and desirable forms of aquatic life.... [T]he entire Bay Plan is founded on the belief that water quality in San Francisco Bay can and will be maintained at levels sufficiently high to permit full public enjoyment and

use of the Bay." In addition, the Bay Plan states, in part, that "[t]he policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board should be the basis for carrying out the Commission's water quality responsibilities."

The San Francisco Bay Regional Water Quality Control Board (RWQCB) has issued a conditional water quality certification for the project. This certification requires that a Construction Stormwater Pollution Prevention Plan be prepared to ensure that adequate erosion and sediment transport control measures would be implemented during the construction phase of the project. During project construction, all stormwater, as well as sediment dewatering liquids, would be captured inside the marina site in a borrow ditch and pumped to adjacent Cargill property for processing.

During project operation, the marina would be required to prepare a Marina Water Quality Management Plan and submit it for review by the RWQCB. The applicant is required to submit a water quality management plan to control nonpoint source pollution originating from the marina. This would include sewage management, fueling station design and operation, control of oil and fuel discharge from boats, hazardous waste management, vessel cleaning and maintenance operations for boats in the water, solid waste management, fish waste management, boat operation, public education, and stormwater runoff treatment.

The Commission should determine whether these measures are sufficient to assure the protection of Bay resources including water quality, marshes, and fish and wildlife, or whether additional measures should be required.

6. **Fish and Wildlife and Tidal Marshes and Tidal Flats.** The San Francisco Bay Plan policies on fish and wildlife state, in part, that "[s]pecific habitats that are needed to conserve, increase or prevent the extinction of any native species, species threatened or endangered, species that the California Department of Fish and Game has determined are candidates for listing as endangered or threatened under the California Endangered Species Act, or any species that provides substantial public benefits, should be protected, whether in the Bay or on the shoreline behind dikes." The San Francisco Bay Plan policies on tidal marshes and tidal flats state, in part, that "[w]here and whenever possible, former tidal marshes and tidal flats that have been diked from the Bay should be restored to tidal action in order to replace lost historic wetlands or should be managed to provide important Bay habitat functions....Further, local government land use and tax policies should not lead to the conversion of these restorable lands to uses that would preclude or deter potential restoration."

No federally proposed or listed threatened or endangered species of plants or wildlife are known to inhabit the project area. However, several listed species including the western snowy plover, California clapper rail, and salt marsh harvest mouse occur on Greco Island, part of the San Francisco Bay National Wildlife Refuge, located across Westpoint Slough from the project site. The shoreline of Greco Island in the vicinity of the project consists of broad shallow mudflats and any boat or human access is restricted.

An existing drainage ditch containing non-tidal wetlands (a small portion of which is located within the Commission's shoreline band jurisdiction) extends along the westerly boundary of the project site, separating it from the Pacific Shores development. A total of 0.27 acres of wetlands would be filled in the U.S. Army Corps' jurisdiction to place 60-inch-diameter culverts to provide drainage where the primary access road to the marina crosses the drainage ditch and to replace the deteriorated tide gate where the ditch enters Westpoint Slough. To compensate for the loss of these 0.27 acres of wetlands in the drainage ditch, the applicant has proposed to enhance and enlarge the wetlands in the remainder of the ditch and to create additional wetland areas on isolated fringes of the project site for a replacement ratio of 1:1 or greater.

The project would also result in the loss of 2.3 acres of shorebird roosting habitat. To mitigate for this impact, approximately 3.0 acres of replacement roosting habitat with similar functions and benefits for the birds would be created pursuant to plans approved by the FWS on the remaining portions of the former bittern pond lying south of the project site.

The applicant has agreed to place and maintain buoys 100 feet from the Greco Island salt marshes with signs that inform the public not to enter the sensitive areas of Greco Island, as well as to install and maintain buoys down the centerline of Westpoint Slough to identify a "no wake" speed zone. The applicant has also agreed to not allow personal motorized watercraft (e.g., jet skis) in the marina. In addition, no public access would be allowed on the east perimeter of the project site, where salt marsh is present. The applicant has agreed to erect and maintain a fence along the eastern and southern property boundaries to protect habitats potentially used by listed species from predator and human intrusion. The applicant has also agreed to implement in perpetuity a predator management program to control predators of clapper rail such as the red fox and feral cats, coordinated with the FWS. Although the FWS refuge branch still requests that the project's mitigation be adjusted to guarantee that the new roosting island be protected from impacts that may occur with development of the surrounding land, as well as other mitigation measures outlined below, all consultations required under Section 7 of the Endangered Species Act with the FWS endangered species branch were completed as part of the Corps application process, as outlined below.

The FWS branch that manages the nearby refuge believes that the marina project should include the following additional mitigation measures: (1) mitigation should guarantee long-term protection from potential impacts associated with development of the surrounding salt ponds; (2) alternatives to the placement of rip rap should be examined because it may provide habitat for predators; and (3) no dredging should be allowed in Westpoint Slough in the future, except the Port of Redwood City's historic dredging of the bar entrance of the Slough to Redwood Creek, to avoid any potential erosion of refuge salt marshes and mud flats from increased tidal flows down Westpoint Slough.

The Commission should determine whether the project would result in the protection of Bay resources including water quality, marshes, and fish and wildlife, whether the mitigation measures recommended by the FWS should be incorporated into the project, or whether additional mitigation measures are appropriate given this project's proximity to the wildlife refuge.

B. **Review Boards**

1. **Engineering Criteria Review Board.** The Engineering Criteria Review Board did not review the proposed project because the project does not raise significant seismic safety issues for the structures located on fill.

2. **Design Review Board.** The Design Review Board reviewed this project at two of its meetings. On May 5, 2003, the Board had the following recommendations: (1) mix up the uses by placing some commercial uses by the boatyard and putting some marina functions by the retail area so that public access users may benefit from and enjoy the marina activity; (2) develop the areas on either side of the marina basin opening further so that these points draw the public to the harbor mouth and foster views to Greco Island; (3) try to break up the monotony of the parking lot on the southern edge of the project by providing more areas of visual interest; (4) break up the building masses on the northern side of the project; (5) describe how various user groups would be involved with the site; and (6) employ environmentally sensitive stormwater runoff techniques. At its June 16, 2003 meeting, the Board focused on the public access spaces of the project, and agreed that the views through the site to the water are as important as the physical access to the water. The Board asked the project team to clarify and improve the proposed view corridors to the marina basin. The Board approved of the public access

plan, specifically the perimeter walkway around the marina basin. However, the Board agreed that additional public access should be required within the building envelopes that were depicted on Exhibit H of the June 16, 2003 project summary. The Board agreed with the staff's recommendation that a certain percentage of each building site should be reserved for public access to allow flexibility in the future design of the phased project. The Board recommended that the public access areas include the potential connections to the neighboring Pacific Shores complex so as to guarantee the option of making those desirable links to the adjacent development. The Board asked that several of the project details come back for the Board's review after the Commission considers the permit application. The elements of the project that should come back include: architecture and layout of all building sites, the covered berthing, path surfaces, and site furnishings.

C. **Environmental Review.** The City of Redwood City, the lead agency for the project, prepared, circulated and, on October 23, 2001, certified a Mitigated Negative Declaration for the Westpoint Marina. Excerpts from the Mitigated Negative Declaration are attached as Exhibit J. The City of Redwood City recently informed Commission staff that it intends to administratively amend the Mitigated Negative Declaration for the project to include changes that have been made to the proposed project in the last year. These changes include making a larger breach in the levee, resulting in a larger marina entrance, and creating a larger water basin at the site. City of Redwood City staff believes these changes to the Mitigated Negative Declaration would not require the Mitigated Negative Declaration to be re-certified or alter the discretionary approval issued for the project.

D. **Relevant Portions of the McAteer-Petris Act**

Section 66602.

Section 66602.1.

Section 66605.

Section 66632.4.

E. **Relevant Portions of the *San Francisco Bay Plan***

1. *San Francisco Bay Plan* Policies on Fish and Wildlife (page 15).
2. *San Francisco Bay Plan* Policies on Water Quality (page 17).
3. *San Francisco Bay Plan* Policies on Water Surface Area and Volume (page 18).
4. *San Francisco Bay Plan* Policies on Tidal Marshes and Tidal Flats (page 19).
5. *San Francisco Bay Plan* Policies on Protection of the Shoreline (page 32).
6. *San Francisco Bay Plan* Policies on Recreation (page 47).
7. *San Francisco Bay Plan* Policies on Public Access (page 51).
5. *San Francisco Bay Plan* Policies on Salt Ponds and Other Managed Wetlands (page 57).
6. *San Francisco Bay Plan* Policies on Mitigation (page 66).

F. **Relevant Portions of the *San Francisco Bay Plan* Maps**

Bay Plan Map No. 6. The project site is designated as a salt pond in Bay Plan Map No. 6.

G. **Relevant Portions of the Commission's Regulations**

Chapters 3, 4, and 5: Major Permit Procedures (pages 508 to 518).